

HIGGINS COATINGS PTY LIMITED PURCHASE ORDER TERMS & CONDITIONS

1. APPLICATION

- (a) These Terms & Conditions apply to ordered goods and/or services (**Deliverables**) purchased by Higgins Coatings Pty Ltd ABN 50 005 632 708 (**Higgins**) from a **Supplier**.
- (b) Unless otherwise agreed in writing, these Terms & Conditions override any documentation provided by the Supplier to Higgins or any previous agreements, arrangements, representations or communications and these Terms & Conditions are accepted by the Supplier when fulfilling the order.

2. PRICE

- (a) Unless otherwise agreed in writing, the total price for the Deliverables is the total price set out in the order (**Total Price**).
- (b) The total price is fixed and is inclusive of all costs for supplying the Deliverables unless the parties have agreed to unit costs or as stated otherwise.

3. PAYMENT

- (a) Payment terms are 30 days from the end of the month following submission of a valid tax invoice (quoting the order number) and providing the Deliverables have been supplied.
- (b) If Higgins disputes the amount of a valid tax invoice, it will pay the undisputed amount in accordance with clause 3(a) and the parties must deal with the disputed amount in accordance with clause 20.
- (c) The Supplier may be entitled to progress payments in respect to the supply of the Deliverables, but only by written agreement between the parties.

4. SUPPLY OF DELIVERABLES

- (a) Higgins gives no representations for the supply of a minimum volume of Deliverables.
- (b) The Supplier must supply the Deliverables:
 - (i) With due care, skill and diligence reasonably expected of a competent provider of similar Deliverables;
 - (ii) In compliance with best industry practice and the reasonable directions of Higgins; and
 - (iii) In accordance with any manufacturer's guidelines and specifications.

5. VARIATIONS

- (a) Higgins may vary the terms of the order, by providing written notice to the Supplier.
- (b) If the Supplier believes the variation will impact the Delivery Details or the total price, the Supplier will advise Higgins and will await further written approval by Higgins before proceeding with the variation.

6. DELIVERY

- (a) The Supplier must supply the Deliverables in accordance with the Delivery Details.
- (b) Higgins has right of refusal for any goods and/or services not delivered in accordance with any Delivery Details or clause 4.
- (c) Any goods must be suitably packed to avoid any form of damage.

7. COMMUNICATION

The parties agree to communicate any issues arising in relation to performance of the order, providing reasonable time to remedy.

8. WORK HEALTH AND SAFETY AND THE ENVIRONMENT

- (a) The Supplier must ensure that the Supplier's representatives attending or working on any site of Higgins or its clients will:
 - (i) Complete an induction prior to commencing any works onsite;

- (ii) Prepare a risk assessment document for the scheduled works prior to commencement of the works;
- (iii) Comply with all applicable laws relating to work health and safety as well as any site security and environmental requirements;
- (iv) Wear the required personal protective equipment, commensurate with the level of risk on site; and
- (v) The Supplier must ensure that all plant and equipment on site is properly maintained and serviced and complies with all relevant laws.

9. HIGGINS' PROPERTY OR THIRD-PARTY PROPERTY

- (a) Any plant, equipment, or other property provided by Higgins or its officers, employees, contractors or agents remains the property of Higgins or any of its officers, employees, contractors or agents.
- (b) The Supplier must use any such property efficiently, without waste and in accordance with the manufacturer's or hirer's specifications or guidelines for use.
- (c) The Supplier agrees not to allow any unauthorised person or entity to use, borrow, access or operate any plant, equipment or other property provided by Higgins or any of its officers, employees, contractors or agents.
- (d) The Supplier indemnifies Higgins or any of its officers, employees, contractors or agents against any direct loss or damage arising from improper use or unauthorised use of any plant, equipment or other property provided by Higgins or any of its officers, employees, contractors or agents.

10. SITE CONDITIONS

- (a) The Supplier must undertake due diligence on the expected and possible physical and weather conditions at any of Higgins or its client's sites that could affect performance and accepts responsibility for unforeseen site conditions.
- (b) Conditions that differ substantially from those reasonably expected by a competent and prudent supplier, may entitle the Supplier to seek a variation under clause 5.
- (c) Approval or otherwise in respect of a variation is completely at Higgins' discretion.

11. TITLE AND RISK

- (a) Title in any Deliverables passes to Higgins on delivery.
- (b) Delivery or payment does not infer quality acceptance of the Deliverables by Higgins.
- (c) Higgins reserves the right to inspect and test, where practicable, goods and/or services whilst in the course of being produced, installed or rendered including at the premises of the Supplier.

12. WARRANTY

- (a) The Supplier warrants that:
 - (i) It has not knowingly engaged and agrees that it will not knowingly engage in any form of Modern Slavery.
 - (ii) It carries all consumer guarantees, terms and conditions that Higgins would be entitled to if it were a 'consumer' within the meaning of the *Competition and Consumer Act 2010* (Cth).
 - (iii) It will confer the benefits of any third-party manufacturer warranty to Higgins.
- (b) The Supplier warrants that the Deliverables:
 - (i) Meet all legislative requirements;
 - (ii) Comply with any mandatory regulations or Australian Standards;
 - (iii) Do not infringe the intellectual property rights of any third person;
 - (iv) Are new (unless otherwise specified);
 - (v) Are free of any encumbrances, and;
 - (vi) Comply with the Deliverables description.

13. DEFECTIVE DELIVERABLES

- (a) If at any time during the period of a manufacturer's warranty, or otherwise 12 months after delivery, performance or installation, Higgins becomes aware of any Defect (including but not limited to defective design, performance or inferior quality or workmanship) in the Deliverables, Higgins may, without prejudice to any other right or remedy available, reject the Deliverables and provide notice for the Supplier to:
 - (i) Refund any payments made by Higgins in respect of any Defective Deliverables including the costs of returning goods to the Supplier;
 - (ii) Re-perform, repair, replace or make good any Defective Deliverables and in which case this clause 13 will re-apply to such items from the date of re-performance, repair or replacement; or
 - (iii) Reimburse, or agree to set-off in Higgins' favour, any expenses Higgins incurs in performing, making good or re-acquiring (including by others) any Defective Deliverables.

14. INSURANCE

- (a) The Supplier must hold all insurances required by law, hold other relevant insurances to cover the Deliverables during the term of the order and hold any insurances specified in the order.
- (b) The Supplier must immediately provide certificates of currency of its insurance policies if requested by Higgins.
- (c) Unless otherwise agreed, the Supplier must have public liability insurance for \$20 million.

15. INDEMNITY

- (a) The Supplier is liable for and must indemnify Higgins and its officers, employees, contractors or agents against any direct loss or damage suffered or incurred by Higgins or any of its officers, employees, contractors or agents in connection with:
 - (i) The Deliverables;
 - (ii) A breach of these Terms & Conditions;
 - (iii) Damage to any property;
 - (iv) The personal injury to, disease of or death of any person;
 - (v) Damage to any plant, equipment or other property provided by Higgins or any of its clients, officers, employees, contractors or agents; or
 - (vi) Any clean-up costs directly or indirectly caused by the Supplier.
- (b) Any indemnity provided by the Supplier is reduced to the extent that such loss or damage was caused by an act or omission of Higgins or any of its officers, employees, contractors or agents.
- (c) So far as the law permits, the Supplier is not liable to Higgins for any form of indirect, remote or consequential loss.

16. SUBCONTRACTING AND ASSIGNMENT

- (a) The Supplier must not assign, transfer or subcontract the whole or part of an order without the prior written consent of Higgins.
- (b) Where Higgins consents to a subcontracting arrangement, the Supplier:
 - (i) Must ensure any subcontractor complies with the Supplier's obligations under this order; and
 - (ii) Will remain liable to Higgins for any act or omission, default or negligence of any subcontractor as if it were the act, omission, default or negligence of the Supplier.

17. INTELLECTUAL PROPERTY

- (a) The Supplier agrees that any design, materials, documents and methods of working developed for the purpose of this order are intellectual property rights belonging to the creator unless otherwise agreed in writing.
- (b) The Supplier warrants that any other designs, materials, documents and methods of working provided by it for the purpose of this order, shall not infringe any other intellectual property right.

18. TERMINATION

- (a) Higgins may terminate an order at any time by providing 5 business days' written notice to the Supplier.
- (b) On termination or expiry of an order:
 - (i) The accrued rights and remedies of each party are not affected;
 - (ii) The Supplier must stop working on any incomplete or undelivered Deliverables;
 - (iii) If requested by Higgins, deliver to it all completed Deliverables which conform in quality to the order; and
 - (iv) The Supplier's sole and exclusive right in respect of the termination is limited to the payment of the price for any Deliverables which have been completed and delivered in accordance with this clause 18.

19. DELAY

- (a) Where an event outside the control of either party prevents or delays performance, the order may be suspended for as long as the delay continues.
- (b) The party becoming aware of the delay must notify the other party in writing as soon as is practicable, providing an estimate of the duration of the delay and the steps it is taking to mitigate the delay.
- (c) Both parties must take all reasonable steps to resolve or abate the delay.
- (d) Higgins, entirely at its discretion, reserves the right to terminate an order for prolonged delay.

20. DISPUTE RESOLUTION

- (a) In event of a dispute, the parties will attempt to negotiate in good faith within 14 days of receiving a written notice of dispute.
- (b) Failing resolution, the dispute must be referred to the party's respective management who will seek to immediately resolve the dispute.
- (c) If the dispute remains unresolved, either party may request the appointment of a mediator.
- (d) If the dispute is not resolved at mediation, the dispute will be referred to an expert who will make a determination that is final and binding on the parties.
- (e) Nothing in this clause 20 affects or limits or is intended to affect or limit the rights of either party to seek or obtain urgent interlocutory, interim or equitable relief.

21. CONFIDENTIALITY

- (a) The Supplier must not advertise, publish or release any information concerning this order, its involvement with Higgins or any details relating to Higgins or its client's sites without the prior written consent of Higgins.
- (b) The obligations under this clause 21 do not extend to information that is required to be disclosed by law.

22. JURISDICTION

This order is governed by the laws of Victoria Australia and the parties submit to the non-exclusive jurisdiction of the courts therein.

23. SEVERABILITY

If part or all a provision of this order is voidable or unenforceable, that provision or part provision will be severed and the rest of this order will remain in full force and effect.